IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1530 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

DEVABHAI TAPUBHAI

Appearance:

1. Special Civil Application No. 1530 of 1994

MR ND GOHIL A.G.P. for Petitioner No. 1-2

MS NAYANA M SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 13/08/2004

ORAL JUDGEMENT

Thoough the matter was called out in the third round Ms. Shah was not present. Hence, the matter is taken up for hearing in his absence.

1.0. The petitioner State of Gujarat has challenged the judgment and order dated 20th May, 1993 passed by the Presiding Officer, Surendranagar in Recovery Application No. 135 of 1992, whereby the Labour Court has granted benefit of Government Resolution dated 17th October, 1988.

2.0. The short facts as they emerge from the record of this petition are that the respondent-workman was engaged as casual worker by the petitioner State for project work known as Implementation of Social Forestry Scheme. It is the say of the petitioner State that the said Scheme was for a fixed period and it was extended and sanctioned by the World Bank from time to time. It is further the say of the petitioner State that since the financial assistance for the maintenance of the said project was not given, the service of the respondent was discontinued.

2.1. In view of that the respondent-workman filed complaint against the Assistant Labour Commissioner at Surendranagar alleging that his services were terminated illegally. On failure of the conciliation proceedings before the Assistant Labour Commissioner, the said complaint was ultimately, referred to the Labour Court for adjudication being Reference [L.C.S.] No. 126/89, whereby the Labour Court directed to reinstate the respondent-workman with continuity of service with 70% backwages.

2.2. Being aggrieved by the said award, the petitioner State approached this Court by filing Special Civil Application No. 8336 of 1991. whereby this Court partly allowed the petition and modified the said award. The petitioner further submitted that the respondent-workman thereafter filed Recovery Application No. 135/92 under the provisions of Section 33 (C) (2) of the Industrial Disputes Act, 1947 for recovering an amount of Rs.21,938=85 in view of the Government Resolution dated 17th October, 1988. The Labour Court, Surendranagar vide order dated 20th May, 1993, allowed the Recovery Application in favour of the respondent-workman. Hence, this petition.

3.0. Mr. N. D. Gohil learned A.G.P. appearing for the petitioner State submitted that the Labour Court has committed serious error while deciding the issue of applicability of the Government Resolution dated 17th October, 1988 inasmuch as there was no separate proceedings under Section 10 of the Industrial Act and also there was no adjudication on the point of

applicability or any preexisting right in favour of the respondent-workman. He further submitted that the Labour Court has not considered the fact that the respondent-workman was engaged for the project work which was for a limited period and also no post of labourer was sanctioned on the permanent basis for carrying out the work.

3.2. I have heard the learned advocate for the petitioner State. It is well settled principle that the Labour Court being existing Court under Section 33-C (2) of the Industrial Disputes Act, cannot ascertain rights of the parties. Therefore, the order under Section 33-C(2) of the Industrial Disputes Act, is required to be quashed and set aside.

3.3. In view of that Mr. Gohil has also placed reliance on the decision of the Apex Court in the case of State Bank of India v. Ram Chadra Dubey & Ors. reported in (2001) 1 S.C.C. p. 73, wherein it has been held that the Labour Court has jurisdiction under Section 33-C(2) and it extends to computation of a pre-existing benefit or one flowing from a pre-existing right and not to computation of a benefit which is considered just and proper. In the present case the Circular dated 17th October, 1988 was not pre-existing right and it was required to be ascertained by the competent authority.

3.4. Mr. Gohil has relied upon a decision of this Court in the case of State of Gujarat & Anr. v. Sendhaji S. Thakor & Anr. reported in 1999 (1) G.L.H. 513, wherein it has been held that in absence of an award, order or an adjudication in favour of a workman and crystallization of the amounts due thereto, no applications under Section 33-C(2) of the I.D. Act are maintainable and that unless and until an adjudication is made, an application u/s.33-C(2) cannot be filed for the recovery of the amounts which are yet not ascertained.

3.5. Mr. Gohil has relied upon a decision of this Court in the case of Milan Cinema & Anr., v. Maganlal Nathalal Mistry, reported in 1999 Labour Law Journal p.220, wherein, it is held that proceeding under Section 33-C(2) is in the nature of execution proceedings where right to receive money or benefit is already determined or admitted and the question is only to the quantum of money or benefit which is to reach the recipient. The question as to entitlement is beyond the scope of enquiry under Section 33-C(2). The Labour Court has therefore no jurisdiction to entertain application under Section 33-C (2) and embark upon an enquiry once issue clearly before

it was about entitlement of the claimant to any right. In the present case when the petitioner has disputed the relationship of master and servant, the Labour Court has committed a serious error in entertaining the application. The right to receive money or benefit is not determined or admitted and, therefore, the question as to entitlement is beyond the scope of enquiry under Section 33-C(2) of the Industrial Disputes Act.

3.6. Mr. Gohil has further relied upon a decision of this Court in the case of Naranji Peraji Trans. Co. v. R.B. Waghela, reported in 1998 (2) G.L.R. p.984, wherein it is specifically held that the Labour Court could not have entertained the application since it involved task of adjudicating whether workman actually worked on Sundays and whether he was entitled to the other claims. In the present case also there was no adjudication as to the entitlement of the workman in respect of certain leave and other benefits as claimed by then, In absence of such prior adjudication the Labour Court should not have entertained the application of the respondent which is contrary to law.

3.7. Mr. Gohil next relied upon a decision of this Court in the case of Gujarat Water Supply and Sewerage Board v. Ketanbhai Dinkarray Panday, reported in 2003 (3) G.L.R. p.2281. In that decision, this Court held that recovery application to the Labour Court claiming overtime without the same being adjudicated by the authority under the Minimum Wages Act, is not directly maintainable under Section 33-C (2) of the Act. Therefore, the order of the Labour Court was set aside.

4.0. However, looking to the facts and circumstances of the case and in view of the decisions referred to hereinabove, in my opinion, the order passed by the Labour Court is required to be quashed and set aside.

4.1. In the result, the petition is allowed. The order passed by the Labour Court, Surendranagar dated 20th May, 1993, in Recovery Applications Nos.135 of 1992 is quashed and set aside. Rule is made absolute. No costs.

[K.S. JHAVERI, J.]

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